



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,073	12/20/2001	William C. Dengler	2824/1	9825

ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
08/13/2007	PAPER

7590 08/13/2007
Adams, Schwartz & Evans, P.A.
2180 Two First Union Center
Charlotte, NC 28282

EXAMINER
RINES, ROBERT D

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/027,073
Filing Date: December 20, 2001
Appellant(s): DENGLER, WILLIAM C.

MAILED

AUG 13 2007

GROUP 3600

W. Thad Adams III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1 March 2007 appealing from the Office action
mailed 16 June 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,018,713	Coli et al.	1-2000
6,108,665	Bair et al.	8-2000
6,014,631	Teagarden et al.	1-2000
6,151,581	Kraftson et al.	11-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665).

(A) As per claims 33 and 38-39, Coli discloses a network-based method for ordering and reporting medical tests comprising (Abstract):

(a) providing a distributed computing and data communications network for medical test ordering and results reporting including (col. 9 lines 5-8):

(i) a server having a patient database for receiving and storing a test record, wherein the patient database server accepts requests for patient test records and retrieves those records from the patient database and other remote repositories, wherein a physician or laboratory technician using a client program is able to order the test resulting in the test record and update the test record (Fig. 2-3, 13, col. 3 lines 25-30, col. 7 line 49 to col. 8 line 12, col. 9 lines 4-60, col. 10 line 53 to col. 11 line 25, col. 12 line 62 to col. 13 line 29, col. 14 lines 42-67, col. 15 lines 14-65);

(ii) client computer communicating with the database via a communications network for permitting physicians, hospitals, and insurers to access the data in records and the test results via a client program, where the records and test results are used to provide reports of cumulative test results, wherein the tests are associated with a diagnosis code and are used to provide an accurate diagnosis for the patient, wherein based on the test results, drugs or medical devices and treatment information that may be needed by the patient are identified and displayed to the physician (providing treatment information, drugs, and medical devices associated with a particular diagnosis and test result is considered to be a form of “coordinating a plan of care”) (Fig. 2-3, 6-7, col. 3 line 53 to col. 4 line 2, col. 21 line 10 to col. 22 line 31, col. 9 line 40 to col. 10 line 61);

Art Unit: 3626

(b) using the client computer to process the data entered by the physician to create a “plan of care” (It is noted in Fig. 6-7 a physician enters a laboratory test associated with a diagnosis to diagnose a disease and the physician also enters a diagnosis) (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17);

(c) communicating over the communications network the laboratory test associated with a diagnosis to diagnose a disease and the diagnosis code associated with the diagnosis to a laboratory (Fig. 2-3, col. 3 line 43 to col. 4 line 8, col. 4 line 62 to col. 5 line 65, col. 11 line 8 to col. 14 line 67, col. 20 line 13 to col. 22 line 31);

(d) receiving and storing the results of the test in a database in accordance with the test ordered and associated with a diagnosis by a physician (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17, col. 14 lines 27-67); and

(e) reporting the test results or cumulative test results for use by a physician in determining a treatment of a disease based on the test results, wherein the results are stored in a test record (Fig. 11, 18-20, col. 14 line 42 to col. 15 line 13, col. 17 line 34 to col. 20 line 4, col. 20 line 13 to col. 22 line 32).

Coli fails to expressly disclose including scheduling information relating to a diagnostic test, creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient’s progress within the treatment track in accordance with the survey schedule and receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results.

Bair discloses scheduling information pertaining to a test, defining a new questionnaire and scheduling a questionnaire and having the physician give the questionnaires to patients to

Art Unit: 3626

determine patient satisfaction with the particular treatment in accordance with the scheduled questionnaire; and receiving the results of the schedules questionnaires and storing the results in a database (Fig. 16-22, col. 10 lines 48-56, col. 12 line 3 to 13 line 22, col. 15 lines 28-61).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Bair within the method of Coli with the motivation of allowing a healthcare provider to assess the relative effectiveness of a particular patient's treatment over time (Bair; col. 2 lines 1-22).

As per the limitations added in the 15 May 2006 amendment, Claim 33 has been amended to recite:

(1) "selecting a plurality of tests" to be conducted "on the patient, the tests" selected to diagnose the selected "medical condition" or an aspect thereof; and "storing in the database a list of the tests so as to enable tracking of the completion status of the tests using the computer;"

(2) "for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible results for that test; and storing the subset of test results in the database;" and

(3) creating a summary "which simultaneously displays the subsets of test results for all of the selected tests" for use by a health care provider in selecting a treatment track for treatment of the "selected condition" based on the test results, and storing the summary in the database."

As per these newly added limitations, the Examiner respectfully submits that Coli discloses:

(1) “selecting a plurality of tests” to be conducted “on the patient, the tests” selected to diagnose the selected “medical condition” or an aspect thereof (Fig. 6, col. 11 line 27 to col. 12 line 37) and “storing in the database a list of the tests so as to enable tracking of the completion status of the tests using the computer” (Fig. 3, 9-11, col. 13 line 29 to col. 14 line 67);

(2) “for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible results for that test; and storing the subset of test results in the database;” (Fig. 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (see Fig. 10 and 18 – ability to select the dates for reporting, where the test results, including the results in that date range are stored in the database);

(3) creating a summary “which simultaneously displays the subsets of test results for all of the selected tests” for use by a health care provider in selecting a treatment track for treatment of the “selected condition” based on the test results, and storing the summary in the database” (Fig. 10, 12, 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (It is noted that Coli discloses generating a cumulative report of data in selected data ranges for use by a healthcare provider for treatment of a disease or medical condition. As per the recitation of simultaneously, note the discussion of transmitting a data stream from a server to the client in Coli (col. 14 lines 1-15). This is considered to be a form of simultaneously).

(B) As per claim 34, Coli discusses the communications network being the Internet (col. 18 line 36 to col. 19 line 53).

Art Unit: 3626

(C) As per claim 35, Coli discussed the treatment being a drug treatment, the use of an outpatient procedure or inpatient procedure using a medical device (col. 16 lines 28-67).

(D) As per claim 36, Coli discloses providing the user with access to the data through a web browser (col. 18 line 15 to col. 20 line 3). The Examiner respectfully submits that it is well known in the art to have a systems administrator maintain a web site. The motivation being to allow for a secure web site.

(E) As per claim 37, Coli discloses using a password to access the website (col. 10 lines 19-42 and col. 18 line 15 to col. 20 line 3).

3. Claims 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665) and Teagarden et al. (6,014,631).

(A) As per claims 40 and 45-46, Coli discloses a network-based method for ordering and reporting medical tests comprising (Abstract):

(a) providing a distributed computing and data communications network for medical test ordering and results reporting including (col. 9 lines 5-8):

(i) a server having a patient database for receiving and storing a test record, wherein the patient database server accepts requests for patient test records and retrieves those records from the patient database and other remote repositories, wherein a physician or laboratory technician using a client program is able to order the test resulting in the test record

Art Unit: 3626

and update the test record (Fig. 2-3, 13, col. 3 lines 25-30, col. 7 line 49 to col. 8 line 12, col. 9 lines 4-60, col. 10 line 53 to col. 11 line 25, col. 12 line 62 to col. 13 line 29, col. 14 lines 42-67, col. 15 lines 14-65);

(ii) client computer communicating with the database via a communications network for permitting physicians, hospitals, and insurers to access the data in records and the test results via a client program, where the records and test results are used to provide reports of cumulative test results, wherein the tests are associated with a diagnosis code and are used to provide an accurate diagnosis for the patient, wherein based on the test results, drugs or medical devices and treatment information that may be needed by the patient are identified and displayed to the physician (providing treatment information, drugs, and medical devices associated with a particular diagnosis and test result is considered to be a form of “coordinating a plan of care”) (Fig. 2-3, 6-7, col. 3 line 53 to col. 4 line 2, col. 21 line 10 to col. 22 line 31, col. 9 line 40 to col. 10 line 61);

(b) using the client computer to process the data entered by the physician to create a “plan of care” (It is noted in Fig. 6-7 a physician enters a laboratory test associated with a diagnosis to diagnose a disease and the physician also enters a diagnosis) (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17);

(c) communicating over the communications network the laboratory test associated with a diagnosis to diagnose a disease and the diagnosis code associated with the diagnosis to a laboratory (Fig. 2-3, col. 3 line 43 to col. 4 line 8, col. 4 line 62 to col. 5 line 65, col. 11 line 8 to col. 14 line 67, col. 20 line 13 to col. 22 line 31);

(d) receiving and storing the results of the test in a database in accordance with the test ordered and associated with a diagnosis by a physician (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17, col. 14 lines 27-67); and

(e) reporting the test results or cumulative test results for use by a physician in determining a treatment of a disease based on the test results, wherein the results are stored in a test record (Fig. 11, 18-20, col. 14 line 42 to col. 15 line 13, col. 17 line 34 to col. 20 line 4, col. 20 line 13 to col. 22 line 32).

Coli fails to expressly disclose including scheduling information relating to a diagnostic test, creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule and receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results.

Bair discloses scheduling information pertaining to a test, defining a new questionnaire and scheduling a questionnaire and having the physician give the questionnaires to patients to determine patient satisfaction with the particular treatment in accordance with the scheduled questionnaire; and receiving the results of the scheduled questionnaires and storing the results in a database (Fig. 16-22, col. 10 lines 48-56, col. 12 line 3 to 13 line 22, col. 15 lines 28-61).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Bair within the method of Coli with the motivation of allowing a healthcare provider to assess the relative effectiveness of a particular patient's treatment over time (Bair; col. 2 lines 1-22).

Coli and Bair do not expressly disclose using the method for managing GERD.

However, Teagarden discloses a method for optimizing health care therapy for GERD (col. 6 lines 20-25, col. 17 lines 18-28, col. 25 lines 1-5). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Teagarden within the method taught collectively by Coli and Bair with the motivation of optimizing therapy for chronic diseases, such as GERD (col. 6 lines 20-67).

As per the 15 May 2006 amendment to claim 40, the Examiner respectfully submits that Coli discloses:

(1) “selecting a plurality of tests” to be conducted “on the patient, the tests” selected to diagnose the selected “medical condition” or an aspect thereof (Fig. 6, col. 11 line 27 to col. 12 line 37) and “storing in the database a list of the tests so as to enable tracking of the completion status of the tests using the computer” (Fig. 3, 9-11, col. 13 line 29 to col. 14 line 67);

(2) “for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible results for that test; and storing the subset of test results in the database;” (Fig. 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (see Fig. 10 and 18 – ability to select the dates for reporting, where the test results, including the results in that date range are stored in the database);

(3) creating a summary “which simultaneously displays the subsets of test results for all of the selected tests” for use by a health care provider in selecting a treatment track for treatment of the “selected condition” based on the test results, and storing the summary in the database” (Fig. 10, 12, 18, col. 13 line 29 to col. 14 line 67, col. 18 lines 16-28) (It is noted that Coli

Art Unit: 3626

discloses generating a cumulative report of data in selected data ranges for use by a healthcare provider for treatment of a disease or medical condition. As per the recitation of simultaneously, note the discussion of transmitting a data stream from a server to the client in Coli (col. 14 lines 1-15). This is considered to be a form of simultaneously).

The remaining amendments to the claims and the limitations addressed in the previous Office Action are rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) As per claim 41, Coli discusses the communications network being the Internet (col. 18 line 36 to col. 19 line 53).

(C) As per claim 42, Coli discussed the treatment being a drug treatment, the use of an outpatient procedure or inpatient procedure using a medical device (col. 16 lines 28-67).

(D) As per claim 43, Coli discloses providing the user with access to the data through a web browser (col. 18 line 15 to col. 20 line 3). The Examiner respectfully submits that it is well known in the art to have a systems administrator maintain a web site. The motivation being to allow for a secure web site.

(E) As per claim 44, Coli discloses using a password to access the website (col. 10 lines 19-42 and col. 18 line 15 to col. 20 line 3).

Art Unit: 3626

(F) As per claims 47 and 48, Coli teaches tests focusing on basic hematology, urinalysis, basic chemistry, special chemistry, and microbiology (col. 3 lines 1-5). Applicant recites such tests as endoscopy, esophageal manometry, ph monitoring, X-rays, and gallbladder ultrasound. The Examiner respectfully submits that these tests, while not expressly disclosed in the Coli, Bair, and Teagarden references, are well known in the medical testing arts. For example, patients routinely undergo X-rays, endoscopies, and ph monitoring when being diagnosed and treated by physicians. Thus, at the time the invention was made, it would have been obvious to modify the teachings of Coli, Bair, and Teagarden to include these medical tests with the motivation of properly diagnosing a patient's medical condition.

4. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665), as applied to claim 33, and further in view of Kraftson (6,151,581).

(A) As per claim 49, Coli and Bair fail to expressly disclose (a) creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule; and (b) receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results in the database.

Kraftson discloses (a) creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule (Fig. 1, 13, col. 20 line 41 to col. 21

Art Unit: 3626

line 24); and (b) receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results in the database (Fig. 13, col. 20 line 41 to col. 21 line 24).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Kraftson within the method taught collectively by Coli and Bair with the motivation of measuring the degree of patient satisfaction with patient treatment (Kraftson; col. 1 lines 40-57).

(10) Response to Argument

In the Appeal Brief filed 1 March 2007, Appellant makes the following arguments:

- (A) Coli et al. and Bair et al. in combination fail to teach "using the computer to solicit from the user a subset of test results selected from the set of possible test results for that test".
- (B) Coli et al. and Bair et al. alone or in combination fail to teach "creating a summary which simultaneously displays the subsets of test results for all of the selected tests".
- (C) There is no suggestion or motivation in the prior art to combine the references (Coli et al. and Bair et al.) in the manner proposed by the Examiner.
- (D) The teachings of Teagarden et al. and Kraftson et al. fail to remedy the deficiencies of Coli et al. and Bair et al. with respect to the limitations of "using the computer to solicit from the user a subset of test results selected from the set of possible test results for that test" and "creating a summary which simultaneously displays the subsets of test results for all of the selected tests".

Examiner will address the Appellant's arguments in sequence as they appear in the Brief.

Art Unit: 3626

Arguments (A)-(B):

In response to Appellant's first and second arguments, Examiner directs Appellant's attention to the limitations recited in claim 33, and the applied teachings of Coli et al. at col. 13, line 29 through col. 14, line 67 and Figs. 10-12.

As presently constructed, claim 33 requires in step (c) "for each of the tests, using the computer to solicit from the user a subset of test results selected from the set of possible test results for that test; and storing the subset of test results in the database;"

Examiner directs Appellant's attention to the teachings of Coli et al. as applied in the Final Office Action mailed 16 June 2006, which notably include displaying on a computer a "test result reporting input screen" (Coli. et al.; col. 13, lines 35-37 and Fig. 10), which enables the entry of test results "...either directly through automated test equipment interfaced with [the/a] or manually by an operator. (i.e., soliciting test results from a user)" and subsequently formats and transmits the collected results to the patient database (i.e., storing results in a database) (Coli et al.; col. 14, lines 32-41 and Fig. 12). Examiner further notes that the entirety of the Coli et al. disclosure is directed to ordering tests, entering/inputting test results, and creating test result reports as "subsets" of tests, termed "categories" and "groupings" by Coli et al. (Coli. et al.; col. 13, lines 44-57). Examiner maintains that the above noted teachings of Coli et al. constitute "using a computer to solicit from the user a subset of test results selected from the set of possible

Art Unit: 3626

test results for that test; and storing the subset of test results in the database;" as recited in finally rejected claim 33.

Additionally, Examiner directs Appellant's attention to the applied teachings of Coli et al. which enable a user to "...display the report on-screen (i.e., generate a report),...,whereby the physician can select particular categories (i.e., subsets) of test results to be viewed" (Coli et al.; col. 13, lines 44-51). Examiner maintains, as set forth previously and reiterated herein above, that the displaying of test results in selectable categories or groupings constitutes "creating a summary which simultaneously displays the subsets of test results for all of the selected tests" as recited in finally rejected claim 33.

Argument (C):

In response to Appellant's third argument, Appellant's pre-KSR brief argues that there is no teaching suggestion or motivation to combine Coli et al. with Bair et al. KSR forecloses Appellant's argument that a specific teaching is required from a finding of obviousness. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. *See Sakraida*, 425 U.S. at 282, 189 USPQ at 453.

Claims 33 and 40 recite the combination which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under *KSR*. In addition, neither Appellant's Specification nor Appellant's arguments present any evidence that modifying Coli et al. with the selected elements of Bair et al. was uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances, the Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Coli et al. to include scheduling information relating to a diagnostic test and scheduling and administration of a questionnaire to determine patient satisfaction with a particular treatment, as disclosed by Bair et al. Because this is a case of prior art elements according to their established functions, no further analysis is required by the Examiner. *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Arguments (D):

In response to Appellant's fourth argument, as noted by Appellant, Examiner's rejection of claim 33 is not reliant on the teachings of either Teagarden et al. or Kraftson et al. with respect to the limitations of "using the computer to solicit from the user a subset of test results selected from the set of possible test results for that test" and "creating a summary which simultaneously displays the subsets of test results for all of the selected tests".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




R. David Rines

Conferees:



Christopher L. Gilligan

Supervisory Patent Examiner



**C. LUKE GILLIGAN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600**

Vincent Millin

Appeals Practice Specialist

Application/Control Number: 10/027,073

Art Unit: 3626

Page 20